IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ENID M. IRIZARRY, Plaintiff,	:	CIVIL ACTION
	:	NO. 98-6180
v.	:	
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, REBECCA L. BICKLEY, JOY GROSS, HOWARD L. PRESSMAN, EUGENE CLARK, DIANN MERVINE, GEORGE STERNBERGER, and MARILYN DEJESUS, Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J. July 13, 2000

Presently before the Court is Defendants' Motion for Summary Judgment on the pleadings in this eight-count lawsuit alleging claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq., and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. § 951 et seq. (West 1991), as well as under several federal statutes and Pennsylvania law. For the reasons discussed below, Defendants' motion will be granted in part and denied in part.

I. BACKGROUND

Plaintiff Enid M. Irizarry commenced her employment with Defendant Commonwealth of Pennsylvania Department of Transportation ("PennDOT") in May 1985. See

Compl. ¶ 13. She was promoted to a supervisory position in January 1993. See id. The Complaint alleges no facts relevant to this action during the eight years prior to her promotion. Plaintiff then alleges that, beginning on February 25, 1997 and continuing to the present, she was subjected to a course of conduct in violation of the anti-discrimination laws, including but not limited to, a demotion, denial of overtime pay, and unequal treatment of the terms and conditions of her employment. See id.

Plaintiff filed a charge with the Equal Employment Opportunity Commission ("EEOC") in September 1997, alleging discrimination on the basis of her Hispanic national origin. See id. ¶ 15 (Exhibit A thereto). She received her Right-to-Sue letter approximately one year later. See id. (Exhibit B thereto). However, that letter was suspended on October 23, 1998 and another letter was issued by the Department of Justice in November 1998. See id.

Plaintiff filed the instant Complaint later that month, stating eight claims against PennDOT and seven of its employees ("Individual Defendants"), most of whom were in management or supervisory positions over Plaintiff during the time relevant to this action. See id. ¶¶ 4-10. Although it is not entirely clear from the Complaint, a generous reading of the essentially boilerplate language indicates that she is alleging claims against the individual defendants in both their official and individual capacities for both monetary and injunctive relief. Moreover, the Complaint is drafted to invoke every conceivable basis of discrimination, but it is plain from the allegations that the only possible bases are gender and national origin.

As filed, Counts I and II alleged claims brought under Title VII for sexual harassment, a hostile work environment, and retaliation; Count III alleged a claim for a deprivation of procedural due process rights in violation of 42 U.S.C. §§ 1981 and 1983; Count

IV alleged a civil rights conspiracy in violation of 42 U.S.C. § 1985; Count V and VI alleged claims brought under the PHRA for discrimination, a hostile work environment, aiding and abetting, and retaliation; Count VII alleged a deprivation of due process and equal protection rights brought under Article I of the Pennsylvania Constitution; and Count VIII alleged a claim for intentional infliction of emotional distress. However, pursuant to the Opinion and Order issued by this Court on April 19, 1999, the following claims are at issue in the present Motion:

(1) Counts I and II (Title VII) against PennDOT;

(2) Count III (42 U.S.C. § 1983) against the Defendant Pressman in his official capacity to the extent that Plaintiff seeks injunctive relief, and against Defendant Pressman in his individual capacity; and

(3) Counts V and VI (PHRA) against the individual defendants in their individual capacities.[1]

II. DISCUSSION

A. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of any genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323

1. Counts VII and VIII allege that Defendants are liable for state constitutional and tort claims. As these Counts are not addressed in Defendants' Motion for Summary Judgment, they will not be addressed in this Opinion, and as such, survive said Motion.

(1986). A factual dispute is "material" if it might affect the outcome of the case under the governing substantive law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Additionally, an issue is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

On summary judgment, it is not the court's role to weigh the disputed evidence and decide which is more probative; rather, the court must consider the evidence of the non-moving party as true, drawing all justifiable inferences arising from the evidence in favor of the non-moving party. See id. at 255. If a conflict arises between the evidence presented by both sides, the court must accept as true the allegations of the non-moving party. See id.

If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). In doing so, the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). If the evidence of the non-moving party is "merely colorable," or is "not significantly probative," summary judgment may be granted. Anderson, 477 U.S. at 249-50.

B. Counts I, II, V and VI: Title VII and PHRA

Courts have uniformly interpreted the PHRA consistent with Title VII. See Clark v. Commonwealth of Pennsylvania, 885 F.Supp. 694, 714 (E.D.Pa.1995); Brennan v. Nat'l Tel. Directory Corp., 881 F.Supp. 986, 994 n.5 (E.D.Pa.1995). Plaintiff alleges hostile work environment harassment and retaliation under both statutes. See 42 U.S.C. §2000e. Thus, I will

analyze her claims within the framework of the Title VII, yet my conclusions, unless otherwise noted, will apply equally to her PHRA claims as well.

a. Hostile Work Environment

In her Complaint, Plaintiff alleges that she was subjected to discriminatory treatment while employed by PennDOT.[2] She asserts PennDOT and the Individual Defendants discriminated against her on account of her gender and her national origin, and subjected her to a hostile work environment. Plaintiff contends that since PennDOT was on constructive and/or actual notice of the alleged harassment, it is subject to respondeat superior liability. As the Individual Defendants have been relieved of liability under Count I of the Complaint, our analysis will focus only on PennDOT.

To establish a prima facie case of sex discrimination under Title VII, a plaintiff must show that: (1) she is a member of a protected class or minority group; (2) she was qualified for the position at issue; (3) she suffered an adverse employment decision; and (4) the position was ultimately filled by a person not of the protected class, see McDonnell Douglas Corp. V. Green, 411 U.S. 792, 802-05 (1973), or that similarly situated non-protected persons were treated more favorably, see Josey v. John R. Hollingworth Corp., 996 F.2d 632, 638 (3d Cir. 1993). The burden of production then shifts to the defendant to articulate a legitimate, non-discriminatory reason for the discharge. See Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). Even if the defendant meets that burden, the plaintiff may still prevail by demonstrating that the reason for the discharge was merely pretextual. See id. at 256. Such a showing is

2. Plaintiff asserts that from February 25, 1997 until the present, she was subjected to a course of conduct which is prohibited under Title VII. Such alleged conduct included a demotion of position, denial of overtime pay and denial of equal terms and conditions of employment.

sufficient to grant summary judgment in favor of the plaintiff. See Sheridan, 100 F.3d at 1066-69. The ultimate burden of persuasion, however, remains at all times with the plaintiff. See United States Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 716 (1983). PennDOT's Motion for Summary Judgment assumes that Plaintiff has made out a prima facie case for discrimination, and therefore, we will treat it as such. Therefore, the burden must shift to PennDOT to articulate a legitimate nondiscriminatory reason for the challenged conduct.

PennDOT asserts that Plaintiff cannot prevail on her Title VII hostile work environment claim because PennDOT, at all times, had legitimate and nondiscriminatory reasons for its actions and Plaintiff is unable to provide evidence that such reasons are pretextual. PennDOT provided the Court with specific documentation as evidentiary support of its legitimate and nondiscriminatory actions, while Plaintiff merely disputes PennDOT's evidence with conclusory statements intended to raise several disputed material facts.

Title VII makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's ... sex." 42 U.S.C. S 2000e2(a)(1). The United States Supreme Court has concluded that a plaintiff may establish a Title VII violation if she can show that gender-based discrimination created a hostile or abusive working environment. Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 66, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986). The United States Court of Appeals for the Third Circuit has set forth a five-part test for the district courts to apply in a hostile work environment case. Accordingly, a female/Hispanic Title VII plaintiff can successfully bring a gender-based/national origin-based discrimination claim against her employer only if she shows that (1) she suffered intentional discrimination on account of her

gender/national origin; (2) the discrimination was pervasive and regular; (3) she was detrimentally affected by the discrimination; (4) the discrimination would detrimentally affect a reasonable woman/Hispanic in the plaintiff's position; and (5) the existence of respondeat superior liability. Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir.1990).

In support of her hostile work environment claim, Plaintiff provided the Court with evidence that throughout her employment with PennDOT, she was subjected to treatment that could reasonably be construed to satisfy the Andrews test. Plaintiff's evidence establishes that on several occasions, she was treated unfavorably. While Plaintiff was an employee with PennDOT, Defendant Sternberger threw papers at her and yelled at her in the presence of customers. The Record provides that Defendant DeJesus also yelled at Plaintiff in front of the public. However, nowhere in the Record is it established that any of the other individual Defendants took any sort of discriminatory action against Plaintiff.[3] While Defendant PennDOT has provided plenty of evidence in support of its theory that its employees were justified in carrying out several of the administrative actions that Plaintiff alleges to be harassment, it is unable to rebut and/or justify Sternberger's actions toward Plaintiff. Therefore, Plaintiff's claim of hostile work environment (Title VII and PHRA) contains issues of fact that must be resolved by a jury.

3. Plaintiff contends that Defendants Gross, Bickley and Mervine, while serving in a supervisory capacity, did nothing while Sternberger yelled at Plaintiff. Plaintiff's only claims against these particular defendants fail, in that they sound of conspiracy allegations--claims that have been previously dismissed by this Court.

b. Retaliation

Plaintiff's retaliation claims (Title VII and PHRA) obviously relate to her being demoted during her employ with PennDOT. These claims must be barred due to the preclusive effect of the Commonwealth Court's Final Order.

In a Title VII action, a prior state administrative decision enjoys preclusive effect if it is affirmed by a state court with jurisdiction and if the state court's decision would have preclusive effect under the law of the state. Kremer v. Chemical Construction Corp., 456 U.S. 461, 485 (1982); Allen v. McCurry, 449 U.S. 90, 95-105 (1980). Pennsylvania requires a concurrence of four conditions before claim preclusion can apply. The two actions must share an identity of the (1) thing sued on; (2) cause of action; (3) persons and parties to the action; and (4) quality or capacity of the parties suing or sued. Duquesne Slag Products Co. v. Lench, 490 Pa. 102, 105, 415 A.2d 53, 56 (1980)(citations omitted).

In the case at bar, the Civil Service Commission rendered a final decision on Plaintiff's claim. Plaintiff appealed that decision to the Commonwealth Court, which affirmed, making this a final judgment. Both the claims that were reviewed by the Civil Service Commission and the retaliation claims at issue before this Court are identical. In the case at bar, the *thing sued on* in both cases was plaintiff's demotion. See Gregory v. Chehi, 843 F.2d 111, 116-17 (3d Cir.1988) (finding plaintiff's discharge gave rise to both federal and state actions). Moreover, both Plaintiff and PennDOT were parties to the prior litigation, in their same employee/employer capacities. Plaintiff's argument essentially focuses on the same cause of action elements. See Id. Therefore, as this Court finds that there is a concurrence of the four

applicable factors, the state decision precludes further litigation on Plaintiff's retaliation claim, as it relates to her demotion.

C. Counts III and VII--42 U.S.C. Section 1983 and State Constitution

As stated above, Plaintiff asserts claims against PennDOT and several individuals in both their individual and official capacity. Count III, however, asserts a Section 1983 claim against Defendant Pressman only. Therefore, the following analysis will consider Plaintiff's Section 1983 claim accordingly.[4]

To maintain a cause of action under § 1983, a plaintiff must establish: (1) the alleged conduct was committed by a person acting under color of state law; and (2) the conduct deprived the plaintiff of rights, privileges and immunities secured by the Constitution or laws of the United States. See e.g., Hicks v. Feeney, 770 F.2d 375, 377 (3rd Cir. 1985). Section 1983 is not a source of substantive rights; it only provides "a method for vindicating federal rights elsewhere conferred." Graham v. Connor, 490 U.S. 386, 393-94 (1989). Consequently, Section 1983 does not provide "a right to be free of injury wherever the State may be characterized as the tortfeasor," the plaintiff must show a deprivation of a federally protected right. Paul v. Davis, 424 U.S. 693 (1976).

Plaintiff contends that Defendant Pressman, while acting under color of state law, deprived her of her Fourteenth Amendment Due Process rights, as stated in the United States Constitution. Plaintiff further asserts that she was deprived of her property interest in her pay and employment and that Defendant Pressman falsely accused her of employment violations that

4. In her Response to Defendants' Motion for Summary Judgment, Plaintiff raises--for the first time-- a substantive due process claim. Because Plaintiff did not raise this claim in her Complaint, she is barred from raising it in this instance.

led to her demotion and eventual firing. From this allegation comes Plaintiff's due process claim, in that, she claims that she was not offered the opportunity to respond to the alleged employment violation prior to her being disciplined.

Plaintiff cannot succeed on the merits of her allegations that she was deprived of her rights to procedural due process. As stated above, her claim for relief under Section 1983 for procedural due process based on the Fourteenth Amendment.[5] Plaintiff has failed to demonstrate that Defendant Pressman intentionally discriminated against her such that she was not afforded procedural due process, as the Record demonstrates that Defendants' investigation of her complaint afforded Plaintiff ample notice and opportunity to be heard. Prior to being demoted, an investigation was conducted into allegations made against Plaintiff. Pursuant to said investigation, interviews were conducted and a pre-disciplinary conference was held, during which Plaintiff was, in fact, asked question relating to the investigation. Plaintiff had the option of utilizing union representation at this interview.

Furthermore, Plaintiff was issued a written notice of the demotion and was informed of her right to appeal. Plaintiff availed herself of this right by filing a complaint with the Civil Service Commission. A hearing was conducted, whereupon Plaintiff testified, as did other individuals who were involved in the decision-making process concerning her demotion. As stated previously, the Civil Service Commission affirmed the demotion, as did the

5. Although Defendants do argue against a possible First Amendment claim, it is the conclusion of this Court that Plaintiff has not, and clearly did not intend to raise such a claim. If she had, however, her claim would fail, as Defendant has provided the Court with sufficient evidence that Plaintiff would have been terminated "without regard for [her] protected First Amendment activity," Larson v. Senate of the Commonwealth of Pennsylvania, 154 F.3d 82, 95 (3d Cir. 1998), cert. denied sub nom. Nix v. Larson, 119 S. Ct. 1037 (1999).

Commonwealth Court. Clearly, Plaintiff was afforded ample due process in connection with her demotion, and therefore, her Section 1983 claim fails as a matter of law.

III. CONCLUSION

For the reasons stated above, Defendants' Motion for Summary Judgment is granted in part and denied in part. As Defendants have failed to address Count VII (Pennsylvania Constitution Claims) and Count VIII of Plaintiff's Complaint, said Counts survive the Motion at issue. Pursuant to this Court's discussion infra, Count I (Title VII) and Count V (PHRA) survive, as well. The remaining counts (Counts II, III, and VI) are dismissed.

An appropriate Order follows.

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O R D E R

AND NOW, this 13th day of July, 2000, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 16), Plaintiff's response thereto (Docket No. 17), and Defendants' Reply Memorandum (Docket No. 18), it is hereby ORDERED that the Motion is GRANTED IN PART and DENIED IN PART, in accordance with the accompanying memorandum.

It is further ORDERED that:

(1) Judgment is entered in FAVOR of Defendants Commonwealth of Pennsylvania Department of Transportation, Rebecca L. Bickley, Joy Gross, Howard L. Pressman, Eugene Clark, Diann Mervine, George Sternberger, and Marilyn DeJesus in both their official and individual capacities and AGAINST Plaintiff Enid M. Irizarry on Counts II and VI; and Counts II and VI are hereby DISMISSED WITH PREJUDICE.

(2) Judgment is entered in FAVOR of Defendants Rebecca L. Bickley, Joy Gross, Howard L. Pressman, Eugene Clark, Diann Mervine, George Sternberger, and Marilyn DeJesus on Count III; and Count III is DISMISSED WITH PREJUDICE.

(3) Count I (against Defendant Commonwealth of Pennsylvania Department of Transportation), Count V (against Defendant Sternberger), and Counts VII and VIII (against Defendants Pressman, Gross, Joy, Sternberger, Clark, DeJesus and Bickley, in their individual capacities) survive this Motion and are ripe for adjudication.

(4) Judgment is entered in FAVOR of Defendants Rebecca L. Bickley, Joy Gross, Howard Pressman, Eugene Clark, Diann Mervine, and Marilyn DeJesus and AGAINST Plaintiff Enid M. Irizarry on Count V; and Count V is DISMISSED WITH PREJUDICE as to those defendants.

BY THE COURT:

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RONALD L. BUCKWALTER, J.